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*Co-Counsel for Plaintiff*

*Counsel for defendants continued on the following page*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**WILLIAM HERESNIAK**, on behalf of  
himself and all others similarly situated.

Plaintiff,

vs.

**ELON R. MUSK, X HOLDINGS I, INC., X HOLDING II, INC., and TWITTER, INC.,**

## Defendants,

Case No.: 3:22-CV-03074-CRB

## STIPULATION AND [PROPOSED] ORDER

Hon. Charles R. Breyer

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22 *Counsel for Defendant Twitter, Inc.*

## **STIPULATION AND [PROPOSED] ORDER**

Plaintiff William Heresniak (“Plaintiff”); Defendant Twitter, Inc. (“Twitter”); and Defendants Elon R. Musk, X Holdings I, Inc., and X Holdings II, Inc. (collectively, the “Musk Defendants” and with Twitter, the “Defendants”); and by and through their respective counsel of record, pursuant to the October 11, 2022, Stipulation and Order to Stay Case (Dkt. 52), hereby submit the following Stipulation and Proposed Order.

WHEREAS, on October 11, 2022, the Court granted the parties' stipulation to stay this action to November 4, 2022, pending the resolution of *Twitter, Inc. v. Elon R. Musk et al.*, C.A. No. 2022-0613 (Del. Ch.) (the "Twitter Delaware Action") and the close of the Musk Defendants' acquisition of Twitter;

WHEREAS, on October 27, 2022, the merger between Twitter Inc. and the Musk Defendants became effective. As a result, certain relief sought by Plaintiff is now moot;

WHEREAS, given this change in circumstances, Plaintiff intends to seek leave to amend his complaint by, among other things, updating certain relevant facts and revising the relief sought;

WHEREAS, because Plaintiff has previously amended his Complaint (Dkt. 7), under Rule 15 of the Federal Rules of Civil Procedure he must obtain Defendants' written consent or the Court's leave to file a Second Amended Complaint;

WHEREAS, Plaintiff has not yet provided his proposed Second Amended Complaint to the Defendants and the Defendants cannot determine whether to oppose or consent to any amendment of the current operative Complaint without first reviewing it;

WHEREAS, any discovery would be premature while the pleadings remain uncertain;

NOW, THEREFORE, it is hereby stipulated by and between the undersigned that Plaintiff and the Defendants shall agree to the following case management deadlines:

1. Plaintiff shall serve a copy of his proposed Second Amended Complaint to Defendants by November 28, 2022.
2. Defendants shall inform Plaintiff in writing whether they will stipulate to the filing of the Second Amended Complaint by December 2, 2022.

1       3. In the event that one or more Defendants do not stipulate to the filing of the Second  
2       Amended Complaint, the briefing schedule for any Motion for Leave to Amend the First  
3       Amended Complaint shall be as follows:  
4           a. Plaintiff shall file any Motion for Leave to Amend the First Amended  
5           Complaint by December 9, 2022.  
6           b. Defendants shall file any opposition by January 6, 2023.  
7           c. Plaintiff shall file any reply by January 20, 2023.  
8           d. Subject to the Court's availability, the parties request that the Motion for  
9           Leave to Amend the First Amended Complaint be heard on February 3, 2023  
10          at the previously scheduled Case Management Conference.

11       4. Should the Court grant Plaintiff leave to file a Second Amended Complaint, any motion  
12          to dismiss or other responsive pleading shall be due 30 days after the filing of the  
13          Second Amended Complaint, any opposition shall be due 30 days after the filing of any  
14          motion, and any reply shall be due 15 days after the filing of any opposition.

15       5. In the event that Defendants do stipulate to the filing of the Second Amended Complaint,  
16          the briefing schedule for any Motion to Dismiss or other responsive pleading shall be as  
17          follows:  
18           a. Defendants shall file any motion to dismiss or other responsive pleading  
19           by January 13, 2023.  
20           b. Plaintiff shall file any opposition by February 14, 2023.  
21           c. Defendants shall file any reply by March 1, 2023.  
22           d. Subject to the Court's availability, the parties request that any pleading  
23           motion be heard on March 17, 2023 or the earliest available hearing date  
24           thereafter.

25       6. Discovery shall be stayed until after the resolution of any motion to dismiss the Second  
26          Amended Complaint.

27

28

1 Dated: November 4, 2022

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16                  Counsel for Defendant Twitter, Inc.

17  
18                  **ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**  
19

20                  I, Joseph C. Sarles, attest that concurrence in the filing of this document has been obtained  
21 from the other signatory. I declare under penalty of perjury under the laws of the United States of  
22 America that the foregoing is true and correct.

23                  Executed this 4th day of November 2022, at Los Angeles, California.

24  
25                  */s/ Joseph C. Sarles*  
26                  Joseph C. Sarles  
27  
28

\* \* \*

## ORDER

**PURSUANT TO STIPULATION, IT IS SO ORDERED**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Hon. Charles R. Breyer  
United States District Judge